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SOUTHERN DISTRICT OF CALIFORNIA

BY: 

DEPUTY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

FORTUNE GROWERS, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

SOUTHERN CITRUS, INC., a
California corporation; HANA GIBO,
an individual; and SABAHA
YOUKHANNA, an individual,

Defendants.

Case No. CV 2088 - JAH CAB

CERTIFICATION OF COUNSEL
AS TO WHY NOTICE SHOULD
NOT BE REQUIRED PURSUANT
TO RULE 65(b)

The undersigned represents Plaintiff, Fortune Growers, LLC ("Fortune Growers") in this action to enforce the trust provisions of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e(c).

1 Notice of Plaintiff's Motion for an Ex-Parte Temporary Restraining Order
 2 should not be required because notice will afford Defendants, Southern Citrus,
 3 Inc., Hana Gibo, and Sabah Youkhanna, an opportunity to dissipate trust assets
 4 that are required by statute to be held for the benefit of Plaintiff, who is a PACA
 5 trust creditor of Defendants. Defendants, Southern Citrus, Inc., Hana Gibo, and
 6 Sabah Youkhanna, are under a statutory duty to pay promptly for produce from
 7 the trust established by statute. **Defendants have failed to pay.** In addition:
 8

- 10 a) Fortune Growers has not been paid for \$115,266.40 worth of
 11 produce that it sold to Southern Citrus, Inc. (See ¶24 of the
 12 Declaration of Luis Solarte filed contemporaneously herewith
 13 ("Solarte Affidavit").
- 14 b) Promised payment has not been received. (¶25, Solarte Affidavit)
- 15 c) Fortune Growers has been forced to call Southern Citrus numerous
 16 times in order to secure payment. (¶¶19, 20, Solarte Affidavit)
- 17 d) Calls made to Southern Citrus by Fortune Growers have been
 18 avoided from June through August. (¶¶21, 23, Solarte Affidavit)
- 19 e) Southern Citrus' PACA license has been terminated. (¶22, Solarte
 Affidavit.)

20 Collectively this evidence indicates that Defendants are experiencing
 21 serious financial problems. Therefore, advising Defendants of the pendency of
 22 this Motion will allow them the opportunity to make payments on non-trust
 23 debts with trust assets in order to avoid serious personal liabilities, e.g. criminal
 24 liability for failure to pay withholding taxes or civil liabilities. Once the trust
 25 assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543,
 26
 27
 28

1 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405,
2 411. See also J.R. Brooks & Son. Inc. v. Norman's Country Market. Inc., 98 B.R. 47
3 (Bkrtcy. N.D. Fla. 1989). Entry of an Ex-Parte Temporary Restraining Order
4 guarantees the performance of this statutory duty, and prevents further
5 dissipation pending a hearing, which can be set as soon as possible.
6

7
8 Respectfully submitted this 26th day of October, 2007.

9 MEUERS LAW FIRM, P.L.

10 By: 

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